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(18,431.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 578.

JOSEPH A. NESBITT AND CHARLES A. MOORE, APPELLANTS,

vs.

THE UNITED STATES AND THE SIOUX INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 17, 1902.

1 *Petition. Filed June* 23, 1891.

In the Court of Claims, December Term, 1890.

JOSEPH H. NESBITT and CHARLES A. MOORE, Formerly Partners Doing Business, under the Firm Name of Nesbitt & Moore, at Washington Ranch, Colorado, *vs.* THE GOVERNMENT OF THE UNITED STATES.	Indian Depredation. No. 2735.

To the honorable Court of Claims:

The claimants Joseph H. Nesbitt and Charles A. Moore respectfully represent:

1. That said Joseph H. Nesbitt is a citizen of the State of Nebraska and a resident of Gage county, Nebraska, his post-office address being Beatrice; that the said Charles A. Moore is a citizen of the State of Nebraska and a resident of Cheyenne county, Nebraska his post-office address being Sidney.

2. That claimants were at all times hereinafter mentioned partners doing business under the firm name of Nesbitt & Moore.

3. That the following-described property belonging to said firm of Nesbitt & Moore was on or about the 25th day of July, 1864 taken and driven away by Sioux Indians; that said Indians were of a nation or tribe then in amity with the United States; that the place where said property was taken by said Indians was at what was then known as Washington ranch in the Territory, now State, of Colorado upon the Platte river about fifty miles above Julesburg; that the said property so taken consisted of the articles and were of the values hereinafter stated, to wit:

Eighteen head of mules, then and there worth $200 each..	$3,600.00
Twenty-nine head of horses, then and there worth $150 each	4,350.00
Making a total of.....	$7,950.00

4. That claim for said property with affidavit in support thereof was on the 2nd day of March, 1891, filed in the office of the Secretary of the Interior, the items of said claim being therein presented in detail as hereinbefore set out; that no action has ever been taken upon said claim.

2 5. That the claimants are the sole owners of this claim and only persons interested therein, and no assignment or transfer of *of* said claim or any part thereof or interest therein has been made; that the claimants are justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets.

6. That the claimants have at all times borne true allegiance to the United States and have never in any way aided, abetted or en-

couraged rebellion against the said Government and said claimants believe the facts as stated in this petition to be true.

Wherefore your petitioners respectfully pray judgment against the defendant upon the facts and the law for the said sum of $7,950 with lawful fees and expenses — be allowed therefrom to their attorneys of record for prosecuting this claim, and that your petitioners may have such other and further relief in the premises as the nature of their case will require, and to this honorable court shall seem meet.

JOSEPH H. NESBITT AND
CHARLES A. MOORE,
By GRIGGS, RINAKER & BIBB,
Their Attorneys.

STATE OF NEBRASKA, }
Gage County, } ss:

Before me Thos. Yule a notary public in and for the county and State aforesaid personally appeared Joseph H. Nesbitt who being duly sworn according to law deposes and says that he is one of the petitioners named in the foregoing petition and that he has read over the foregoing petition and thoroughly understands the same and that the matters and facts therein stated are true to the best of his knowledge and belief.

JOSEPH H. NESBITT.

Subscribed and sworn to before me this 4th day of June, 1891.

[SEAL.]

THOS. YULE,
Notary Public.

3 II.—*Claimants' Request for Findings of Fact. Filed May* 24, 1900.

The claimants, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same as follows:

1. That the claimants, Joseph H. Nesbitt and Charles *H.* Moore, were at the time that this depredation was committed July 25, 1864, partners and loyal citizens of the United States, living at Washington ranch, Weld county, Colorado, Nesbitt having been born in New York and Moore in Portage county, Ohio. See 2d deposition of Moore and statement of both partners.

2. That this claim was originally filed March 2, 1891, in the Interior Department; that Joseph H. Nesbitt and Chas. A. Moore were the sole and equal owners of said claim; and that Joseph A. Nesbitt died on February 2, 1892, at Beatrice, Gage county, Nebraska, and that Ada Nesbitt, his widow, was duly appointed and qualified as his administratrix and admitted as a party to this suit. (See stipulation of counsel filed on or about that date.)

3. That this claim was filed in the Interior Department of
4 the United States under the limitations and provisions of the act of March 3, 1891. See testimony on first page of petition, and papers on file from the Interior Department No. 6850.

4. That the Sioux Indians, who committed this depredation, were according to the bulk of the testimony and in accordance with the ruling of the court, in amity with the United States on the 25th day of July, 1864.

5. That the claimants lost through a raid made on their ranch on the Platte river, State of Colorado, by the Sioux Indians July 25, 1864, 18 head of mules valued at $200 each and 29 head of horses valued at $150 each, making a sum total of $7,950, at a fair valuation. See testimony of Joseph H. Nesbitt, John A. Nesbitt and Chas. A. Moore, and that they never recovered any of these animals and that they have never been paid any portion of this sum claimed, and never attempted to recoup themselves, and are entitled to recover it, and that no sale or assignment has ever been made of this claim.

6. That the partnership was formed between Nesbitt and Moore for a general freighting business in 1862 and dissolved the latter part of August, 1864.

5 March 2, 1891.
Statement of Damages Made to the Interior Department, with Accompanying Affidavit of Joseph H. Nesbit, One of the Claimants. Filed April 6, 1900. in the Court of Claims. J. R.

The Government of the United States Dr. to Joseph H. Nesbitt and Charles A. Moore, formerly doing business, under the firm name of Nesbitt & Moore, at Washington ranch, Colorado.

To eighteen head of mules at $200.00 each.....	$3,600.00
" twenty-nine head of horses at $150.00.....	4,350.00

driven off and stolen by the Sioux Indians in the latter part of July, 1864, from Washington ranch, about fifty miles from Julesburg, up the Platte river on the main road to Denver.

Affidavit of Joseph H. Nesbit hereto attached in support of this claim. Corroborative affidavits of other witnesses will be forwarded whenever Mr. Nesbitt is notified that this claim is filed and will be considered by the Government.

(Signed) GRIGGS, RINAKER & BIBB,
Beatrice, Neb., Attorneys for Claimant.

6 STATE OF NEBRASKA, } ss:
County of Gage, }

Joseph H. Nesbitt, being first duly sworn, says: That he is fifty-nine years old, lives in Gage county, Nebraska, and has lived there since 1878, and has since 1866, been living and engaged in farming in Kansas and Nebraska. Affiant says that in 1859 he commenced freighting between St. Joseph, Missouri, Omaha, and Nebraska City

to Denver, Colorado. In 1862, this affiant formed a copartnership with one Charles A. Moore, who was then living in Colorado, in the freighting business between said points, which said copartnership continued until the fall of 1864. In 1862, this affiant and the said Moore established a ranch, called Washington ranch in Colorado about fifty miles up the Platte river from Julesburg. Affiant and his said partner, Moore constructed upon said ranch a sod-house fifty by twenty-two feet inside measurement. Said house being one and one-half story-high; also sod stables sufficient to accommodate one hundred head of horses; also two corrals, one for horses and the other for cattle, together with other improvements. Affiant and the said Moore kept from one hundred and fifty to two hundred head of horses, mules, and cattle upon said ranch, and cut, cured and stored hay thereon sufficient for their said stock. The said Moore lived on the said ranch and had charge and control of the same, conducting it with the assistance of from two to eight men. That in the latter part of the month of July, 1864, affiant and his said partner Moore were the owners of, and had upon said ranch eighteen head of mules and thirty head of horses, said mules and horses belonging to affiant and the said Moore equally, and were used by said firm of Nesbitt & Moore in freighting as aforesaid.

7 Affiant says that at that time, to wit, in the latter part of July, 1864, — band of mounted Sioux Indians, about eight or nine in number made a raid upon the said ranch, and drove away all of said horses and mules, except one horse which was tied up at the rack in front of the house, the other horses and mules which were driven off by the Indians, having been turned out to graze, and were grazing at the time, a short distance from the ranch. At the time of the said raid, and when the said Indians drove off the said horses and mules, Moore and the man employed upon the ranch of whom there were three or four, were eating breakfast. That at the same time said Indians also drove away about fifty head of ponies that were on the ranch, but which did not belong to said firm. Affiant states that none of said mules and horses so taken and driven away by the Indians were ever recovered back by this affiant, or his said partner Moore; although said Moore and the other man on the ranch immediately gave chase as soon as they could get their arms, but inasmuch as the Indians had taken all of the horses and ponies upon the ranch, except one horse, they were unsuccessful in their efforts to prevent the Indians getting away with the stock, and neither affiant or his partner never saw or got trace of said horses or mules after they were so driven off by the said Indians. Affiant further states that neither himself nor the said Moore have ever received any pay or compensation of any kind or description for said eighteen head of mules and twenty-nine head of horses so stolen by the Indians. Affiant further says that said mules were worth on an average two hundred dollars a head and the horses were worth on an average one hundred and fifty dollars a head, all of said mules and horses being in fine condition.

8 Affiant further states that his former partner, the said Charles A. Moore, was, about six years ago, living at Sidney, Nebraska, and, if alive, knows personally, all of the facts hereinbefore stated. Affiant and said Moore have frequently since the said depredation talked this matter over, and have always intended to present their claim to the Government for the damages sustained by them in the loss of said horses and mules, as soon as any provision should be made for the payment or adjudication of this class of claims. Affiant has just this day seen in a newspaper, to wit, the "Omaha Daily Bee" of the 25th day of February, 1891 that a law is about to be enacted by Congress which provides a way of securing from the Government damages occasioned by Indian depredations, and that to secure the payment of claims for damages occurring prior to 1865, that claims for such damages must be filed with the Secretary of the Interior before said act becomes a law. Affiant attaches a copy of said newspaper article which is marked Exhibit "A" and made a part of this affidavit. Affiant has immediately prepared this affidavit setting forth the said claim of himself and his said partner in order that this affidavit and application may be filed with the honorable Secretary of the Interior, in time to come within the provisions of said proposed act of Congress. Affiant says that owing to the distance between this affiant who now lives at Beatrice, Nebraska, and the place affiant last knew said Moore to be, to wit, Nebraska, it is impossible for affiant to communicate with said Moore and secure his affidavit corroborating the statements herein made, at the present time. Affiant further says that besides said Moore, there is only one other person known to affiant, by whom the foregoing statements can be corroborated and proven; that said person

9 is John Nesbitt, a brother of this affiant, now residing in Osborne county, Kansas, and who at the time said horses and mules were taken by the Indians as aforesaid, was living upon and was personally present at said ranch, and saw said Indians driving said horses and mules away. Owing, however, to the lack of time, within which to secure the said John Nesbitt's affidavit, before said act of Congress will become a law, according to the article in the said Omaha Bee, this affiant has not been able to procure the affidavit of the said John Nesbitt corroborating the statements herein contained.

Affiant says that as soon as he is informed that this claim is duly filed with the Secretary of the Interior, and is not too late to be considered under the law, this affiant will procure the affidavit of the said Charles A. Moore and John Nesbitt, and whatever other corroborative proof this affiant can obtain, and forward the same in support of this claim and application.

Affiant further says that at the time the said horses and mules were stolen by the Indians, they were reasonably worth the sum of seven thousand nine hundred and fifty dollars ($7,950), in which amount affiant and the said Moore were then and there damaged.

(Signed) JOSEPH H. NESBITT.

Subscribed in my presence and sworn to before me this 25th day of February, A. D., 1891.

(Signed) R. S. BIBB,
[SEAL.] *Notary Public.*

(Signed) GRIGGS, RINAKER & BIBB,
Attorneys, Beatrice, Neb.

10 EXHIBIT "A."

The Omaha Daily Bee.

Wednesday, February 25, 1891.

WASHINGTON BUREAU THE BEE,
513 FOURTEENTH STREET,
WASHINGTON, D. C., *Feb.* 24, —.

Indian Depredation Claims.

The Indian depredation bill will undoubtedly become a law within a week and it is therefore of the highest importance for those who may be affected by its provisions to understand the limitations of the act. There seems to be a misunderstanding as to the date prior to which the claims can be prosecuted. Any claim on file or which shall be filed before the bill becomes a law, no matter when the depredations occurred, comes under the provision of the law, but no claim for depredations which occurred prior to 1865, unless they are on file when the bill becomes a law, can be adjudicated by the courts with jurisdiction for Indian depredation claims. All of the thousands of claims now on file and which have been presented either to Congress or the Interior Department can be considered by the courts and any claim filed with the Interior Department before the act takes effect can also be taken into consideration; but when the act goes into effect, as before stated, no claim based upon a depredation committed prior to the year 1865, will come under the provisions of the law. Claimants, therefore, who have not already filed their claims and whose claims were based upon injuries inflicted by Indians prior to 1865 should at once make out their affidavits, attach such evidence to them as they can secure and forward them at once to the Secretary of the Interior. Requests have come to several Senators, asking for petitions or declarations and blank forms for making out such claims. There are no such forms. All that is needed is a statement of the claim, properly sworn to, and with corroborative evidence which should be forwarded to the Secretary of the Interior.

11 Indian depredations.

NESBITT & MOORE
v.
THE UNITED STATES and SIOUX INDIANS. } No. 2735.

Defendants' Plea. Filed October 24, 1901 J. Randolph A.C.C.

Now comes the Assistant Attorney General and, after leave of the court first had and obtained, for plea to the declaration filed herein says that the court is without jurisdiction to hear and determine said cause, for the reason that the depredation charged is alleged to have been committed prior to the 1st of July, 1865, and that no claim for such depredation was ever presented to the Secretary of the Interior or the Congress of the United States, or any superintendent, agent, subagent, or commissioner, authorized under any act of Congress to inquire into such claims, within the meaning of the first proviso of the second section of the act of March 3, 1891.

And this the defendants are ready to verify.

JOHN G. THOMPSON,
Assistant Attorney General.

12 *Judgment of the Court.*

NESBITT and MOORE
vs.
THE UNITED STATES and THE SIOUX INDIANS. } No. 2735. Indian Depredation.

At a Court of Claims held on the second day of December 1901 judgment was ordered to be entered as follows:

The court on due consideration sustains the defendants' plea to the jurisdiction of this court, and do order that the petition of the claimants be dismissed.

BY THE COURT.

13 *Claimants' Application for and Allowance of Appeal.*

From the judgment rendered in the above-entitled cause on the 2nd day of December 1901 in favor of the defendant-, the claimants by their attorney of record, on this 29th day of January, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States on the question of law, involving the jurisdiction of the court, under which the petition in this cause was dismissed.

BELVA A. LOCKWOOD,
Attorney for Claimants.

Filed January 29, 1902.

Ordered that the appeal be allowed as prayed for.
January 29, 1902.

BY THE COURT.

14 Court of Claims.

NESBITT and MOORE
vs.
THE UNITED STATES and THE SIOUX INDIANS. } No. 2735. Indian Depredation.

I, John Randolph assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the claimants' requests for facts, of the judgment of the court sustaining defendants' plea to the jurisdiction, and dismissing the petition, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 28 day of February A. D. 1902

Seal Court of Claims.

JOHN RANDOLPH
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 18,431. Court of Claims. Term No 578. Joseph H. Nesbitt and Charles A. Moore, appellants *vs.* The United States, and The Sioux Indians. Filed March 1st, 1902.